

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

THOMAS JOSEPH SCHIFFERNS,)	CV 05-22-H-DWM-CSO
)	
Plaintiff,)	
)	
vs.)	ORDER
)	
MIKE MAHONEY (WARDEN), DREW)	
SCHOENING (DR.) (CHIEF OF)	
PSYCHOLOGICAL SERVICES), and)	
TAMARA SUNDERLAND (SOCIAL WORKER)-)	
MENTAL HEALTH,)	
)	
Defendants.)	
)	

This case is before the Court on motions for summary judgment by Defendant Sunderland (Doc. No. 20) and Defendants Mahoney and Schoening (Doc. No. 24). Plaintiff Schifferns seeks relief under 42 U.S.C. § 1983 for alleged violations of his Eighth Amendment rights when the Defendants did not place him on psychiatric medications in the intake unit of the Montana State Prison.

United States Magistrate Judge Carolyn S. Ostby entered Findings and Recommendations in this matter on October 24, 2006. The parties did not timely object and so have waived the right to de novo review of the record. 28 U.S.C. § 636(b)(1). This Court will review the Findings and Recommendation for clear error. McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc., 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been committed." United States v. Syrax, 235 F.3d 422, 427 (9th Cir. 2000).

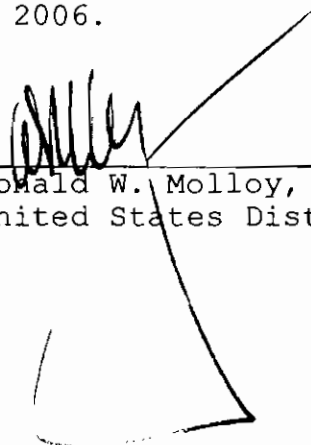
Judge Ostby recommended the dismissal of the Plaintiff's Complaint for failure to exhaust his administrative remedies in the Montana State Prison grievance review process. Specifically, the Plaintiff failed to advance his grievance against the Defendants to the fourth and final level of the grievance review process, which consists of an appeal to the Director of the Department of Corrections. Judge Ostby explained that exhaustion of administrative remedies is a prerequisite to filing a claim under 42 U.S.C. § 1983, citing 42 U.S.C. § 1997(e). She recommended dismissal with prejudice because any effort by the Plaintiff to take the final administrative appeal to the Director would be untimely, making it impossible for him to comply with the exhaustion requirement.

I can find no clear error with Judge Ostby's Findings and Recommendations and adopt them in full.

Accordingly, IT IS HEREBY ORDERED that the Defendants'

motions for summary judgment (Doc. Nos. 20 and 24) are GRANTED
and the Complaint is DISMISSED WITH PREJUDICE.

DATED this 20th day of November, 2006.



Donald W. Molloy, Chief Judge
United States District Court